

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 September 2020

Public Authority: Department of Health and Social Care

Address: 39 Victoria Streetp
London
SW1H 0EU

Decision (including any steps ordered)

1. The complainant requested information from the Department of Health and Social Care ("the DHSC") about its targets, from 2010 onwards, for reducing NHS fraud. The Department of Health responded, but initially neither provided the information nor explained whether it was held. After an internal review, it stated that the requested information was not held. The complainant has accepted that the information was not held, but was dissatisfied with the DHSC's handling of her request.
2. The Commissioner's decision is that the DHSC breached the requirements of section 1(1) of the FOIA in responding to the request.
3. Since the information is not held, the Commissioner does not require the DHSC to take any steps.

Request and response

4. On 13 February 2020, the complainant, on behalf of the organisation Stop UK Lies and Corruption, wrote to the DHSC and requested information in the following terms:

"The 2017 Annual Fraud Indicator, page 22, states NHS fraud stands at £3.423 billion consisting of.. Dental charge fraud, England 2007 to 2016; Optical charge fraud, England 2007 to 2016; Prescription charge fraud, England 2014 to 2016; Dental contractor fraud, England 2013 to

2016; Pharmaceutical contractor fraud, England 2013 to 2016; Optical contractor fraud, England 2013 to 2016; General practice contractor fraud, England 2013 to 2016; Other procurement fraud, England 2015 to 2016; Payroll fraud, UK 2015 to 2016.

Please kindly supply your targets for reducing NHS fraud from 2010 onwards. For public reference here is the 2017 AFI [link provided] "

5. The DHSC responded on 19 February 2020, as follows:

- It stated that it held *"information relevant to [the] request"*.
- It stated that it did not recognise the figures quoted in the request, pointing out that the Annual Fraud Indicator was not a DHSC publication. It provided a link to a publication on the website of the NHS Counter Fraud Authority entitled *The 2019 Strategic Intelligence Assessment*.
- It also stated: *"DHSC has committed to measuring counter fraud progress against a cumulative £300 million fraud reduction target by 2020/21"*.

6. The complainant requested an internal review on 20 February 2020. She stated:

"We note you kindly supplied what appear to be your most recent targets, but we asked for targets from 2010 onwards. Please kindly supply them or state clearly if you do not hold them, as the Freedom of Information Act requires".

7. A further exchange of correspondence followed, in which the complainant repeated twice more that she was requesting the targets from 2010 onwards.

8. Following an internal review, the DHSC wrote to the complainant on 6 March 2020. It stated: *"I note that your FOI request of 13 February asked DHSC to supply its targets for reducing NHS fraud from 2010 onwards, and that, whilst our reply supplied the most recent targets, we did not give information on targets from 2010 onwards. I understand that targets are not available and are therefore not held before the ones that were provided in our response of 19 February and I apologise if that information was not made clear."*

9. The DHSC stated, however, that it considered its response of 19 February 2020 had been *"compliant with the requirements of the FOIA"*.

Scope of the case

10. The complainant contacted the Commissioner on 13 March 2020 to complain about the way her request for information had been handled. Specifically, she was unhappy with the way the request had been handled, both in terms of the response and the internal review.
11. The Commissioner explained to the complainant that, since there is no statutory requirement under the FOIA for a public authority to carry out an internal review (although she considers it best practice to do so), her determination as to compliance could cover only the DHSC's response of 19 February 2020.
12. This notice covers whether the DHSC complied with section 1(1) of the FOIA in responding to the request.

Reasons for decision

Section Heading

13. Section 1(1) of the FOIA states that:

"Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him or her."
14. In this case, the DHSC responded to the request on 19 February 2020. It stated that it held "*information relevant to the request*". It also stated that it had a target to reduce NHS fraud by £300 million, by 2020/21.
15. However, the complainant has argued that she had requested the DHSC's targets from 2010 onwards, and that she was not told whether this information, specifically, was held. The Commissioner has considered whether the information being sought, was clear from the request.
16. The Commissioner has considered whether, in the request of 13 February 2020, the phrase "*from 2010 onwards*" could have been interpreted as applying to NHS fraud, rather than to the DHSC's targets. However, the Commissioner does not consider that the request was

unclear. In her view, on an objective reading of the request, the DHSC was required to state whether or not it held targets from 2010 onwards.

17. The Commissioner is satisfied that, in failing to confirm whether targets from 2010 onwards were held, the DHSC's response of 19 February 2020 did not comply with the requirements of section 1(1)(a) of the FOIA.
18. Since the complainant has accepted that this information is not held, the Commissioner does not require the DHSC to take any steps.

Other matters

19. In this case, the Commissioner considers that the DHSC showed poor practice in its handling of the internal review. While not a statutory requirement, the *Freedom of Information Code of Practice*¹, issued under section 45 of the FOIA, sets out clear expectations for the handling of internal reviews, as a matter of best practice.
20. On 20 February 2020, after receiving the response from the DHSC, the complainant, as previously set out in this notice, wrote to the DHSC and explained that she had requested targets from 2010 onwards and not just the most recent targets, and reminded the DHSC that it was obliged either to *"supply them or state clearly if you do not hold them"*.
21. However, despite the complainant's clear position, the DHSC questioned twice whether an internal review was being asked for, or whether the complainant was making a new request. Put simply, the DHSC appeared not to "join the dots" between the wording of the request and the request for an internal review; indeed, it questioned whether the complainant was seeking to use the internal review mechanism as an *"alternative avenue"* by which to request new information.
22. The Commissioner notes the prompt handling of the request in this case. However, she expects the DHSC to recognise a request for an internal review more readily and handle it appropriately.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

23. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Phillip Angell
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SK9 5AF